IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 9762 of 2004

Between:

Manne Laxminath Reddy, s/o Srinivasa Reddy,

Occu: Chairman & Managing Trustee,
Sri Venugopala Swamy Temple, Moolapet, Nellore.

..... PETITIONER

AND

1. The Commissioner of Endowments,

Tilaknagar, Boggulakunta, Hyderabad.
2. The Deputy Commissioner (S),

Endowment Department, Nellore,
Nellore District.
3. Sri Vemuri Gopi,
Manager, Sri Venugopala Swamy Temple,

Moolapet, Nellore.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, particularly one in the nature of Writ of Mandamus by declaring the impugned proceedings issued by the 2nd respondent vide his Proceedings in D.Dis.No. D3/25786/2004 dated 3-6-2004, as arbitrary, illegal, contrary to law, void abinitio and set aside the same.

Counsel for the Petitioner :Mr.J.ASHVINI KUMAR

Counsel for the Respondents No.1 & 2: GP FOR ENDOWMENTS

Counsel for the Respondent No.3 : Mr. G. TUHIN KUMAR

The Court made the following ORDER :

The petitioner is the founder trustee and is the Chairman and Managing Trustee of Sri Venugopala Swamy temple, Moolapet, Nellore. He questions the order dated 03-06-2004 of the Deputy Commissioner, Endowments Department, A.P., Hyderabad, as illegal and unsustainable.

The said impugned order reads as follows:

Office of the Commissioner,

Endowments Department,

A.P., Hyderabad.

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D. Dis.No.D3/25786/2004 dt.03.06.2004

Sub: Endowments Department – Sri Venugopala Swamy Temple –Moolapet, Nellore – Up-gradation of the post of Manager in Sr. Assistant, cadre to that of Superintendent cadre – orders Issued.

Ref: Representation of Sri Vemuri Gopi, Manager of the subject temple, Dt.30-05-2004.

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In due consideration of the representation in the reference cited, the post of Manager in the cadre of Sr. Assistant in the subject temple is upgraded to that of Manager in the cadre of Superintendent.

The Founder Trustee and Chairman of the subject temple is permitted to promote Sri Vemuri Gopi, working as Manager in the cadre of Sr. Assistant in the subject temple to that of Manager in Superintendent cadre if he is fully qualified to hold the post of Manager in Superintendent cadre.

//BY ORDER OF THE ADDITIONAL COMMISSIONER//

Sd/- T. Chandra Kumar

Deputy Commissioner(S)

It is stated on behalf of the petitioner that the income of the temple is more than rupees 10 lakhs and there is no Executive Officer appointed in respect of the said temple and the petitioner is performing the duties as Executive Officer. Under Section 35 of the A.P., Charitable and Hindu Religious Institutions and Endowments Act, 1987(Act No.30 of 1987)(for short 'the Act'), the Executive Officer is competent authority to appoint the office holders and servants of the Charitable/Religious/Endowment institutions.

The third respondent is working as Manager in the cadre of Senior Assistant in the said temple. But there is no post of Manager in the cadre of Superintendent. In so far as the appointment and the promotion is concerned, the Executive Officer is competent to appoint or promote in respect of the approved staffing pattern of the said temple.

Learned Counsel appearing for the petitioner submitted that there is no post of manager in the cadre of Superintendent scale and the third respondent is only manager in the cadre of senior assistant. The third respondent, without filing any application before the petitioner, has straight away filed a representation dated 30-5-2004 before the Deputy Commissioner and the Deputy Commissioner, in turn, even without calling for any remarks, passed the impugned order upgrading the post of 3rd respondent who is working as manager in the cadre of the Senior Assistant, to the post of the manager in the cadre of the Superintendent. The Deputy Commissioner not only upgraded the post of the third respondent from senior assistant to the cadre of Superintendent but also gave further directions to the petitioner to promote the third respondent, who is working as manager in the cadre of the senior assistant, to that of the manager in the cadre of Superintendent. It is the case of the petitioner that the third respondent cannot bypass the petitioner and get an order from the Deputy Commissioner, Endowments either in regard to upgrading the post or with regard to promotion of the third respondent.

On the other hand, the learned counsel appearing for the third respondent submits that he has filed a representation before the petitioner on 10-08-2001 seeking promotion to the post of the superintendent and as the said representation was not considered, he has approached the Deputy Commissioner. But the said factum of filing the said representation before the petitioner has been disputed by the learned

counsel appearing for the petitioner. Even in the counter-affidavit filed by him, the third respondent has not stated the said factum of filing the representation before the petitioner. The learned Counsel appearing for the third respondent further submits that as per Section 24 of the Act, it is the duty of the trustee to obey all lawful orders issued under the provisions of the Act by the Registrar and Deputy Commissioner or Assistant Commissioner as the case may be.

Under Section 24(3) of the Act, the trustee of Hindu Charitable and Religious Institutions shall obey all lawful orders. The lawful orders are stated in Section 24(1) (a) and (b) and the Section 24(2). This is not one of the orders passed by the Deputy Commissioner under Section 24(1) requiring the trustee to submit any report or information relating to administration of the temple or its fund or income or other properties connected therein. The said order of the Deputy Commissioner of the Endowments is contrary to Section 35(1) of the Act. If the appointing authority has not taken any action or refused to upgrade the post or promote the entitled servant of the temple, then it is open for the aggrieved party to approach the Assistant Commissioner or Deputy Commissioner as the case may be. But in the instant case, the third respondent has not only bypassed the appointing authority, but has straight away filed a representation on 30-05-2004 before the second respondent and the second respondent readily considered the said representation within three days even without calling for any remarks from the petitioner. Having regard to the facts and circumstances of the case, I am of the opinion that the impugned order of the second respondent dated 03-06-2004 is illegal and unsustainable.

For the aforesaid reasons, the writ petition is allowed with costs and the order impugned dated 03-06-2004 of the second respondent is set aside.

V. Eswaraiah, J.

Dt:23..09..2004.

Rns/Kvrk.

To

1. The Commissioner of Endowments,

Tilaknagar, Boggulakunta, Hyderabad.
2. The Deputy Commissioner (S),

Endowment Department, Nellore,
Nellore District.
3. Two CCs to G.P. for Endowments, High Court of A.P.,

Hyderabad.(OUT),

4. Two CD copies.

HON'BLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION NO. 9762 OF 2004

DATED: 23-09-2004